



Paper No. 9

Judy C Jarecki-Black PhD
Womble Carlyle Sandridge & Rice PLLC
Ste 3500 One Atlantic Center
1201 West Peachtree Street
Atlanta GA 30309

COPY MAILED

MAR 05 2003

OFFICE OF PETITIONS

In re Application of
Abell, et al.
Application No. 09/557,495
Filed: April 24, 2000
Attorney Docket No. P092 1020

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed February 6, 2003, to revive the above-cited application. The petition will also be treated as a petition under 37 CFR 1.181(a) to withdraw the holding of abandonment.

The petition under 37 CFR 1.181(a) is **granted**.

The petition under 37 CFR 1.137(a) is **moot**.

TREATMENT UNDER 37 CFR 1.181(a)

This application was held abandoned on July 2, 2002, after no reply was received to the non-final Office action, mailed April 1, 2002, which set a three-month statutory period for reply. Petitioner was advised that the above-cited application was abandoned by a Notice of Abandonment mailed October 23, 2002. Petitioner filed the instant petition on February 6, 2003, and therein argued that the non-final Office action was never received. In support of the instant petition, petitioner filed a statement indicating that the notice was never received and that a search of the file jacket and docket records supports the same and copy of the docket record where the subject notice would have been entered had it been received

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has meet the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

Petitioner is advised that there is no petition fee associated with a petition to withdraw a holding of abandonment filed under 37 CFR § 1.181(a).

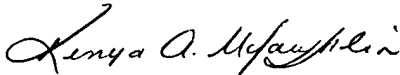
TREATMENT UNDER 37 CFR 1.137(a)

As the holding of abandonment has been withdrawn pursuant to 37 CFR 1.181(a), there is no remedy that could be provided by the petition under 37 CFR 1.137(a). The petition under 37 CFR 1.137(a) is, therefore, rendered moot by the granting of the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment.

The petition fee of \$55.00 will be refunded to petitioner, in due course.

Petitioner is advised that the above-cited application will be forwarded to the Office of Patent Publications for processing into a patent.

Telephone inquiries concerning this decision may be directed to the undersigned, at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions